IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.448 OF 2005

Mr.Kailash T. Yadav — Appellant
vs.
1. Mr.Damoda Motiram Gharat & anr. — Respondents

Mr.Rajesh Behere for the appellant.

Mr.D.K.Ghaisas for the respondent no.1.

Mr.C.M.Lokesh with Mr.G.S.Hegade for the respondent no.2.

Mr. A.A. Gorge for the respondent no.3.

Mr.Kakade for respondent no.4.

CORAM : B.H. MARLAPALLE,J.

DATED : 19th August 2005

P.C.

Heard Mr.Behere, the learned counsel for the appellant who has instituted Special Civil Suit No.453/2004 for specific performance of the purported agreement for sale/development dated 21st September 2002 between the plaintiff and the defendant no.1. It is contended that when the said agreement was signed, an amount of Rs.2,85,000/- being the 10% of the total consideration of Rs.28,50,000/- was paid to the defendant no.1. However, after the defendant no.1 executed the allotment letter dated 6th June 2004 in favour of the defendant no.1, the defendant no.1 changed his intention and wanted to sell the subject plot at much higher price than the consideration agreed in the agreement dated 29th January 2002. In the said suit, an

application at Exhibit 5 has been rejected by the learned Civil Judge, Senior Division, Thane by the impugned order dated 24th December 2004.

2. The trial Court noted that prima facie there was no proof in support of the contentions of the plaintiff that the agreement dated 29th January 2002 was executed by the defendant no.1 and also there was no document to show that the consideration of Rs.2,85,000/- was received by the defendant no.1. In addition, the suit plot was jointly allotted to the defendant no.1 and his wife, whereas the wife was not impleaded as another defendant to the suit and similarly she was not made one of the executing parties in the assignment-cum-development agreement dated 29th January 2002. It was under these circumstances that the trial Court held that there was no prima facie case made out for granting the temporary injunction and balance of convenience was not in favour of the plaintiff.

3. The reasoning set out by the trial Court does not suffer from any error and, therefore, this appeal must fail at the threshold.

4. The same is hereby dismissed in limine.

(B.H. MARLAPALLE,J.)